

## **CHAPTER 10.**

### **COMPLIANCE**

**10.1 Codes and Rules.** Codes are statutes or laws and are known as “black letter law.” Any changes to the codes require action by the Texas Legislature which meets every other year. Rules are the regulations that the commissions and boards of agencies pass to clarify the laws and set out the details as to how the law will be administered. Rules are easier to change as they may be presented to the board or commission at any time. So while the Codes may change only every other year, the rules may be changing at any time. The rules are considered laws and carry the same weight as a code provision. A dealer needs to keep abreast of the various laws and the changes that may occur by attending seminars and reading special mail-outs from the different agencies. This is another reason why it is very important to keep the different agencies informed as to the dealership's current address.

The specific codes and rules to be discussed in this chapter involve the following:

**a. Texas Occupations Code.** The Texas Occupations Code (formerly the Texas Motor Vehicle Commission Code) historically has regulated the relationship between franchised dealers and their manufacturers. Since the Motor Vehicle Division acquired jurisdiction of the independent dealers and the general dealer law, the Occupations Code has evolved to also include independent dealers and is applied in transactions involving used vehicles. Leasing of vehicles and the licensing of lessors and lessees is found in this Code, as is the direction to regulate advertising. Fines under the Occupations Code can range as high as \$10,000 per violation, per day, of a continuing violation.

**b. The Texas Transportation Code.** The Transportation Code is a large set of laws involving everything from motor carriers, driver's licensing and traffic signals to titling of vehicles. The dealer law that the Motor Vehicle Division administers is Chapter 503. In this chapter, you will find the dealer licensing requirements and laws regarding dealer plates and temporary tags. Fines under this chapter can run from \$50 to \$5,000 if pled under the criminal penalty portion in §503.094, in addition to a civil penalty of \$50 to \$1000. However, for more serious violations of the Transportation Code, Section 2301.801 of the Texas Occupations Code allows a civil penalty of up to \$10,000 for violations of §503.038(a) of the Transportation Code.

**c. The GDN Rules.** All the rules adopted by administrative agencies in Texas are compiled in a set of law books known as the Texas Administrative Code (TAC). All rules adopted by the Texas Transportation Commission and the former Texas Motor Vehicle Board along with the rules promulgated to administer Transportation Code Chapter 503 (known as the GDN rules) are found in Title 43, Chapter 8 of the TAC. The GDN rules detail the requirements of getting a license, premises requirements and some general operation guidelines. They also set out under

what circumstances metal plates and tags may be used and how to fill out temporary tags.

**d. Advertising Rules.** All rules promulgated by the Texas Transportation Commission regarding advertising motor vehicles are found at 43 TAC §§8.241-8.271. These rules apply to both new and used vehicles unless explicitly stated otherwise in the rule.

**e. Leasing Rules.** In 1995, the Legislature passed a law that amended the Occ. Code requiring licensing of lessors and lease facilitators. Rules adopted by the Texas Transportation Commission regarding requirements for licenses, records and premises are found at 43 TAC §§8.8.171-8.181.

**f. Lemon Law Rules.** Warranty performance obligations set out in §2301.601et seq. of the Occupations Code are commonly known as the Lemon Law. The rules that set out how the Lemon Law will be administered are found at 43 TAC §§8.201-8.210. This is where you will find out how a vehicle qualifies for repurchase or repair under the Lemon Law and how complaints of consumers are handled.

**g. Other Laws.** Dealers are responsible to many different agencies for many laws on the local, state and federal level. The Texas Finance Code, the Texas Tax Code and the Deceptive Trade Practices Act are just a few examples. Cities have zoning and signage ordinances. Some cities require additional licenses for motor vehicle dealers. Federal agencies such as OSHA and EPA have serious penalties for violations of emission and work place standards.

**10.2 Specific Violations Under Codes or Rules.** All the aforementioned codes and rules set out specific procedures for obtaining a license and requirements for running certain aspects of a dealer's business. Failure to abide by these laws may subject a dealer to a civil penalty or the cancellation of his license. The following are specific violations found in these laws. Many have been discussed in depth in previous chapters of this book. These violations are found in the Transportation Code §503.038:

**a. Falsifying or forging documents.** A dealer may not falsify or forge a title document, including an affidavit making application for a certified copy of a title.

**b. Filing a false or forged document.** A dealer may not file a false or forged tax document, including a sales tax affidavit.

**c. Keeping Open Titles.** A dealer may not fail to take assignment of any basic evidence of ownership, including a certificate of title or manufacturer's certificate, for a vehicle the dealer acquires, known as an "open title." Receiving, holding or delivering an open title is a violation and a very risky way to conduct business. An open title is like a blank check.

**d. Not assigning titles.** A dealer may not fail to assign any basic evidence of ownership, including a certificate of title or manufacturer's certificate, for a vehicle the dealer sells.

**e. Misuse of plates or tags.** A dealer may not use or permit the use of a metal dealer's license plate or a dealer's temporary cardboard tag on a vehicle that the dealer does not own or control or that is not in stock and offered for sale. Not filling out all the required information on the tags as required, or giving out more than one red tag on a sale is also prohibited.

**f. Making Material Misrepresentations on Applications.** If a person misrepresents a fact on any application to the department, whether it is a false statement of ownership, a false response to the felony question or a designation of a false place of business, a serious violation has occurred. Such violations could result, at the minimum, in denial of the application and possibly could result in a civil penalty.

**g. Failing to maintain qualifications for GDN.** The initial requirements to get a license must be maintained throughout the license period. This includes all requirements as to signs, business hours, office requirements, phones, allotted spaces, leases, etc. The department may deny an application for a license, revoke or suspend an outstanding license, impose a civil penalty or place on probation a person whose license has been suspended or reprimand a licensee for any of the reasons set forth in the Occ. Code. Civil penalties can range from \$50 to \$10,000 per violation per day.

The department shall cancel a dealer's GDN if the dealer obtains the number by submitting false or misleading information. A person whose GDN is canceled under this chapter shall surrender to a representative of the department each license plate, temporary cardboard tag, sticker and receipt issued under this chapter not later than the 10<sup>th</sup> day after the date the GDN is canceled. The department shall direct any peace officer to secure and return to the department any plate, tag, sticker or receipt of a person who does not comply with this subsection. A person whose GDN is canceled automatically loses any benefits and privileges afforded under Texas Transportation Code Chapter 501 to the person as a dealer.

**h. Refusal to provide evidence of being in business.** A dealer may not fail to provide to the department within 30 days after the date of demand by the department satisfactory and reasonable evidence that the person is regularly and actively engaged in business as a wholesale or retail dealer.

**i. Not Remaining Regularly and Actively Engaged in the Business.** Those people who are not really in the business as dealers normally carry a license for some other nefarious purpose. Maybe they just want a license to avoid paying sales tax for their personal vehicles, or possibly, they want access to the auction to buy their own vehicles at wholesale. Regardless, those persons who make fewer than five (5) retail sales per year will have their license challenged. In recent years, the Texas

Legislature passed a law *requiring* tax appraisal districts to turn in to the MVD the names of any dealers who either fail to file the annual VIT declaration and monthly statements or do not sell five vehicles within the calendar year.

**j. Failing to Report or Pay Taxes.** Although the MVD does not collect taxes, should dealers fail to properly report and pay state sales taxes or vehicle inventory taxes, such failure could result in additional penalties and revocation of licenses from this agency.

**k. Misuse of license.** Misuse of a license involves any use of the license for purposes other than that specifically contemplated under the dealer law. Lending license numbers to unlicensed entities to buy or sell vehicles, or using the dealer location for illegal purposes are examples of misuse of a license.

**l. Off-site Sales, Curbstoning.** Dealers are not allowed to sell vehicles from anywhere but their duly licensed premises. (43 TAC 8.136) Dealers are strictly prohibited from curbstoning, which is the practice of selling vehicles away from a dealer's licensed location. Dealers are also subject to penalty if they aid and abet curbstoning by selling vehicles to persons who practice curbstoning. Exceptions to this are the permitted shows and displays discussed in Section 4.20 of this manual.

**m. Failure to apply for title within 20 working days of the date of sale.** The most common complaint received from consumers is they have not received their plates or title to the vehicle within 20 working days of the purchase. See also Chapter 4, Section 4.8. There are only two valid defenses to this violation. The first defense is if the consumer has misrepresented their credit history on a credit application. In that instance, the dealer has the right to rescind the contract. The second defense is if the dealer has promptly paid off the lienholder of the vehicle but the lienholder has failed to issue a release of lien within 10 days of the payoff. This is known as the "lienholder excuse" and is the only occasion when a dealer may issue a blue supplemental tag to a consumer when the red tag expires.

If the lienholder has failed to issue a release of the lien to the dealer after payoff, the dealer should notify the enforcement section of MVD of such non-compliance so the dealer will not be held responsible.

It is not a defense to this violation that the title is held by a prior owner or the title is lost. If a dealer has sold a vehicle without ascertaining where the title is, then he is responsible for purchasing the 30-day permit for the consumer until the dealer can locate and transfer the title. In addition, it is not a defense that the buyer has not come up with the tax, title and license fees. This should have been covered in the down payment before the vehicle was released to the consumer. Further, lack of insurance on the part of the buyer is no longer an excuse since dealers are no longer required to provide proof of financial responsibility of the buyer.

**n. Giving the title work to the consumer.** Since January 1996, dealers are required to apply for the title and registration and not give the paperwork to consumers. The Tax Assessor-Collector offices have been very cooperative in turning in paperwork to MVD that has been filed by the consumer who bought a vehicle from a dealer. If a consumer is taking the vehicle out of state immediately, then a dealer should have the consumer fill out the Comptroller's Sales Tax Exemption Certificate for vehicles taken out of state. This form is kept in the dealer's sales file in case of an audit.

**o. Failing to Notify MVD of Change of Address.** As stated prior, any change in the licensed entity, ownership, physical or mailing address must be reported within 10 days of the change.

**p. Incomplete or No Records.** Rules require records to be kept for at least 24 months. The current and immediately preceding 12 months must be available for inspection at the dealer's location. Records from the prior 11 months may be kept either on the licensed site or off-site within the same county. Failing to keep records at all or incomplete records is a serious violation.

**q. Not responding to request for records.** Not keeping records is a serious violation, but not producing those records when a representative appears at a dealership is even more serious. Most information is requested by the MVD through certified mail. If a dealer fails to respond to this mail request, it is a violation and the agency representative may travel to the dealership to inspect not only the requested information, but the general state of records overall.

**r. Forgery or Fraud.** This encompasses rollbacks, title frauds and fraudulent sales of reconditioned vehicles. Also in this category are credit fraud or commercial fraud, floorplanner fraud and consignment fraud, which usually go hand in hand with these activities. In all of these instances, the perpetrator has made representations that have induced someone to buy a vehicle that he or she would not have purchased but for the fraudulent representations.

**s. Spot Deliveries.** This fraudulent practice consists of selling and delivering a consumer a car after signing a Retail Installment Contract and then calling the consumer back into the dealership to sign a new contract with higher interest, higher payments or to put more money down. This practice happens a lot when a dealer wants to tie the consumer to a sale but is unable to verify credit in a timely manner.

If a dealer wishes to employ this practice, there are special contracts such as a bailment contract, also known as a conditional sale and delivery agreement, which should be entered into instead of a Retail Installment Contract. These contracts make it clear to the consumer that the deal is not final.

The Office of the Consumer Credit Commissioner has approved a form that contains three elements:

1. The buyer also has an option to cancel the sales contract before credit is approved;
2. The buyer can cancel with full refund and return of trade-in if financing is not approved in accordance with the terms described in the purchase order;
3. The buyer's liability in case of cancellation is limited to rental, excessive mileage and use, which are items set out in the contract.

**t. Dehorsing.** Dehorsing is done in conjunction with a spot delivery. When the consumer refuses to sign a new contract and demands back their trade-in, the consumer is told their trade-in has already been sold, thus forcing him or her into the new contract or a vehicle of lesser value.

**u. Parking on the Right-of-Way.** Dealers are specifically prohibited from parking or displaying vehicles on the right-of-way adjacent to their dealership premises unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly consents to such use in writing. Use of right-of-way property that is part of the state highway system may only be authorized by a lease agreement entered into with the Texas Department of Transportation. This permission is given very seldom due to the nature of the safety hazard involved in allowing cars to obstruct the view of oncoming traffic. If a dealer wishes to inquire as to written permission, the dealer should call the local TxDOT office.

**v. Failing to Pay Civil Penalties.** One sure way to lose a license permanently is to refuse or neglect to pay any civil penalties assessed against a licensee by the department.

**10.3 Odometer Rollbacks.** Dealers are strictly prohibited from fraudulently tampering with an odometer to reduce the number of miles indicated on the instrument. This is a federal and state law with serious criminal penalties. Besides the criminal penalties, a person could be permanently denied a dealer license upon such a conviction. Dealers should exercise extreme caution when purchasing used cars with low mileage and inspect them for signs of odometer tampering. For the purposes of this law, odometer means an instrument for measuring and recording the distance a motor vehicle travels while in operation. This does not include an auxiliary odometer designed to be reset by the operator to record mileage on trips.

Pursuant to Transportation Code §727.002, a person who commits such an offense is subject to:

- Confinement in the county jail for not more than two years;
- A fine not to exceed \$1,000; or
- Both the confinement and fine.

If a person is found *more than once* to be guilty of odometer tampering, he or she is subject to punishment by:

- Confinement in the county jail for not less than 30 days or more than two years;
- A fine not to exceed \$2,000.

Under the federal statute, some individuals found guilty of numerous practices of odometer tampering or related fraud have been sentenced to up to nine years in prison and fined more than \$400,000.

**10.4 Unlicensed Sales.** No person, unless exempted by the Occ. Code as noted in Section 3.3 of this manual, may sell or offer to sell motor vehicles without having a GDN and/or franchised dealer license for the purposes of engaging in the business of buying, selling or exchanging motor vehicles, including purchasing wholesale vehicles or participating in auto auctions.

Franchised dealers may be sanctioned for offering to sell or selling or transferring new motor vehicles for which they are not franchised.

**10.5 Selling to Foreign Dealers or Residents.** On January 17, 2002, the Texas Motor Vehicle Board passed a rule designed to give the MVD one more tool to reduce curbstoning. The rule is known as the Foreign Dealer Rule and is directed at those foreign dealers who buy vehicles here in Texas on the pretext of exporting to Mexico and other countries, but instead illegally sell the vehicles on this side of the border in unfair competition with Texas dealers. Many of those Texas dealers along with a group of Tax Assessor-Collectors along the border proposed the procedure to the MVD staff that then wrote the rule and presented it to the Texas Motor Vehicle Board. While the rule was aimed at the illegal Mexican dealer, the rule was worded to apply to sales to any person claiming to buy vehicles for exporting. This rule became effective March 7, 2002.

The rule requires auctions and dealers to do two things, first of all, verify the identity of the buyer then stamp the title with the words "For Export Only" and the selling dealer's or auto auction's General Distinguishing Number. See Section 4.22 for more information and page 4-25 for an illustration of where to stamp the "for Export Only" stamp.

**10.6 Violating Any Law relating to a Motor Vehicle Sale.** Under Texas Occupations Code, any person who violates any law relating to the sale, distribution, financing or insuring of motor vehicles is subject to civil penalties, or probation, denial, suspension or revocation of their license and GDN by the Department.

**10.7 Brokering.** Texas law prohibits the brokering of motor vehicles among persons who are not licensed motor vehicle dealers. The definition of a broker is a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale of a new motor vehicle. Arranging or offering to arrange a transaction has been defined to include soliciting or referring buyers for new motor

vehicles. Therefore, the "transaction" of referring a customer to a dealer for a fee, is considered brokering. See 43 TAC 8.84 and 8.85 for the full text of the broker rules.

**a. New motor vehicles.** The only persons allowed to broker new motor vehicles are franchised dealers or bona fide employees of a franchised dealer when acting on behalf of the franchised dealer. Representatives and distributors and their bona fide employees are likewise exempted from the brokering prohibition. Consequently, a used vehicle dealer may not accept a fee from a franchised dealer for referral of a new motor vehicle customer.

**b. Used motor vehicles.** The brokering of used motor vehicles is allowed by those licensees possessing a valid GDN, which would include all licensed franchised and independent dealers.

**c. Referral companies.** The broker rules also set out how a referral company can operate without violating the broker rules. In summary, the company may operate legally if they:

- Do not offer exclusive market areas;
- Allow all dealers to participate on equal terms with no restrictions as to size, location or line-make;
- Charge all participants the same fee that is not based on a per referral basis or other transaction-related fee;
- Do not set or suggest to the dealer any price of vehicles or trade-ins;
- Do not advertise or promote their plan in the manner that implies that the buyer, as a customer of that program, receives a special discounted price that cannot be obtained unless the customer is referred through that program.

**d. Bird-dog fees.** Referral fees are also known as bird-dog fees and are considered to be broker fees.

**10.8 Internet Sales.** With the growth of the Internet, many dealers are finding this is a great source of sales leads. MVD encourages dealers to initiate their own web site to make themselves accessible to the public. When advertising on the Internet, a licensee should be mindful that the agency considers the Internet as another form of media and all advertising rules apply. Also, a dealer should be especially careful not to misrepresent themselves or their inventory to avoid any deceptive or fraudulent sales practices. This includes advertising that suggests the consumer is buying the vehicles from someone other than the license holder. Dealers are also reminded that the law requires dealers who advertise a vehicle to have not only the vehicle, but also the title to the vehicle in their possession when the advertisement appears no matter what the media.